

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 118 of 1998

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

DAKSHIN GUJARAT KAMDAR ASSOCIATION

Versus

DIAMOND ASSOCIATION

Appearance:

MR NR SHAHANI for Petitioner
MR RR MARSHALL for Respondent No. 1
MR DP JOSHI, AGP, for Respondent No. 6, 7, 8

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 01/04/98

ORAL JUDGEMENT (Per K. Sreedharan, C.J.)

This Special Civil Application has been moved by
General Secretary of Dakshin Gujarat Kamdar Association.
The Association claims to be a trade union of workers
engaged in diamond polishing/processing industry in

Surat. As a result of the wage reduction imposed by owners of factories engaged in diamond cutting and polishing, there was wide resentment among the labourers. As a result of that they carried out certain demonstrations. It led to lathi charge and bursting of tear gas shells by the police. At last, the police had to resort to firing. One Kalubhai sustained bullet injuries to which he succumbed.

2. The petitioner alleges that large number of factories function in Surat which are engaged in diamond cutting and polishing activities. Such factories have not been registered under the Factories Act and the rules framed thereunder. No factory maintains register of its workers. Identity cards are not being issued to the workers. Benefits of labour legislations have been denied to them. The governmental machinery which is duty bound to enforce labour laws for the benefit of workers engaged in these factories are not taking appropriate legal steps contemplated by law to protect the labour.

3. One of the prayers made by the petitioner on the above basis is to issue a direction to respondents 5, 7 and 8, Labour Commissioner, Chief Factory Inspector and Govt. of Gujarat, to ensure that all the diamond processing factories are registered under the Factories Act, 1948 and the provisions with regard to identity cards, attendance cards, wage slips, wage register etc. are enforced in respect of all workers working in various factories within two weeks.

4. On behalf of respondents Nos. 1 to 4, respondent No. 1 being the diamond manufacturers association, a detailed affidavit-in-reply has been filed. Major defence raised in that affidavit is regarding the locus standi of the petitioner to move a petition of this nature. Apart from that, it is said that factories engaged in diamond cutting and polishing are complying with the provisions of the Factories Act and other labour laws and that there was no wage cut, as alleged by the petitioner, from 1.1.1998.

5. Mr. U.P. Patel, Jr. Inspector of Factories, Surat, filed affidavit dated 21.2.98 in reply to the various averments made by the petitioner. It is stated therein that provisions of the Factories Act, 1948 for registration of factories engaged in the manufacture of diamond are implemented. Up to the year 1996, 353 diamond factories have been registered. 17 new applications were received and forwarded to the Chief Inspector of Factories for final orders. 3 applications

received later are being processed. During 1998, 51 diamond factories have been visited by various inspectors. Those factories were directed to apply for registration and to take licence under the Act. 612 violations of the provisions of the Factories Act and the rules were detected and show-cause notices were served. During the last 15 years 816 cases filed on account of the violation of the provisions of the Act were disposed of and fine of Rs. 44,455/- realised. 48 criminal complaints arising out of the violation of the Factories Act are pending. Petitioner's averment regarding wage cut has been admitted but according to this factory inspector, settlement has been reached between leaders of the diamond factories association and factory management within a span of one week and wage cut which was declared earlier was withdrawn. According to this officer, the wage cut was due to international recession in the diamond business. He went on to state that some of the factories engaged in manufacture of diamond have been registered as commercial establishments under the Bombay Shops and Establishments Act, 1948. It has also been admitted that on the personal visits it has come to know that identity cards, wage registers, muster rolls, etc. were not found in the factories but, according to him, show-cause notices have been issued to such factories.

6. On getting notice of this petition, all the respondents filed affidavits-in-reply to the contentions raised by the petitioner. They were heard at length on the points raised by them in their pleadings. Consequently, we are disposing of this special civil application finally on merits.

7. The petitioner has moved this application purporting to be public interest litigation. It claims to be a trade union of workers engaged in manufacture of diamond. The workers are engaged in diamond polishing/processing. Its status as a trade union of the workers engaged in diamond industry is disputed by the first respondent, the association of diamond manufacturers. According to that association, the petitioner association has no representation of employees engaged in the manufacture of diamond, to their knowledge. On this basis it is contended that the petitioner has no locus standi.

8. On the facts and circumstances of this case, we do not think that this petition is to be thrown out on the ground of want of locus standi of the petitioner to move this Court. By this petition, the miserable plight of the workers engaged in diamond industry at Surat and

the absence of effective measures taken by the officers of the Labour Department in implementing the provisions of various labour legislations have been brought to the notice of this Court. The facts now brought out clearly reveal the failure of the Labour Dept. in implementing the legal duties cast on them by various labour legislations. In such a situation, we feel that it is the duty of this Court to direct the officers of the Labour Dept. to carry out their legal duties in accordance with law. Consequently, we overrule the contention raised by the first respondent that this special civil application is not maintainable on the ground that the petitioner has no locus standi to move this Court under Art. 226 of the Constitution.

9. Virtually, it is admitted by all sides that diamond manufacturing process is being carried out in Surat in various factories. Those factories are coming within the definition of that term in the Factories Act. So, all those factories where diamond manufacturing processes are being undertaken should be registered under the Factories Act. The affidavit-in-reply filed on behalf of the Labour Department shows that all the factories have not been registered under the Factories Act. Some of those factories are registered as commercial establishments under the Bombay Shops and Establishments Act. No factory coming within the purview of the definition of that term in the Factories Act is to be registered as a commercial establishment or as a shop under the Bombay Shops and Establishments Act. A factory engaged in the manufacture of diamonds should not have been allowed to be registered under the Shops and Establishments Act. Registration of such factory under that Act is illegal. Officers working under the said enactment should examine this issue and take appropriate remedial steps.

10. It has clearly come out in this case that all factories engaged in the manufacture of diamond are not registered under the Factories Act. The Factory Inspectors are directed to inspect the premises where such manufacturing process is being conducted and take appropriate action to get those establishments registered as factories under the Factories Act in a time-bound manner. In case the officers of the Labour Department entrusted with those obligation are prevented from inspecting the factories or its site, they must carry out the inspection with sufficient police help. This exercise must be carried out throughout Surat within one month from the date of receipt a copy of this judgment. On such inspection, if it is found that the factories

have not been registered under the Factories Act, effective steps must be taken to get it registered under the Factories Act and at the same time proceedings for violating the provisions of the Act must also be initiated. All the provisions contained in the Factories Act and the rules framed thereunder should be implemented. A specific reference to the issue of identity cards as per Form 36 prescribed in factory rules must be insisted. In case of violation of any of the provisions of the Factories Act and the rules framed thereunder, effective steps to implement the same should be pursued including prosecution for the violation. We direct the Labour Commissioner and the Chief Factory Inspector to monitor the working of their subordinates in implementing the above directions in the factories engaged in manufacture of diamond situated in Surat.

11. This Special Civil Application is disposed of in the above terms.

12. A copy of this judgment will be forwarded to the Labour Commissioner and the Chief Factory Inspector for implementing the directions given earlier in this judgment. We direct the parties to suffer their costs.

1.4.1998 (K. Sreedharan, C.J.)

(A.R. Dave, J.)

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